Supreme Court, U.S.
FILED

(2)

No. 97 909 DEC - 1 1997

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In the Supreme Court of the United States

October Term, 1997

Linda Maddox

Petitioner

v.

Capitol Bankers Life Insurance Company, et al.

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Seventh Circuit

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 2, 1997

By the Court:

LINDA MADDOX, Plaintiff-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 97-1320 v.	] Illinois, Eastern] Division.
CAPITOL BANKERS LIFE INSURANCE COMPANY, BRUCE NICKERSON, FRANCES NICKERSON, et al., Defendants-Appellees.	]] No. 94 C 5207]] Blanche M. Manning,] Judge.

The following are before the court:

1. MOTION FOR PROCEEDING IN FORMA PAUPERIS, filed on March 1, 1997, by the pro se appellant.

2. AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS, filed on March 14, 1997, by the pro se appellant.

3. MOTION FOR LEAVE TO FILE APPELLANT'S BRIEF IN EXCESS OF LENGTH SET BY RULE, filed on August 7, 1997, by the pro se appellant.

IT IS ORDERED that #1 is DENIED.

This court has carefully reviewed the final order of the district court, the record on appeal and the appellant's motion. Based on this review, the court has determined that any issues which could be raised are insubstantial and the filing of briefs would not be helpful to the court's consideration of the issues. See Mather v. Village of Mundelein,

869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument).

Accordingly, IT IS ORDERED that the appellant's motion for leave to proceed in forma pauperis is DENIED and the district court is summarily AFFIRMED. Taylor v. City of New Albany, 979 F.2d 87 (7th Cir. 1992) cert.denied, 506 U.S. 1085 (1993).

In light of the disposition of this appeal, #3 is DENIED as MOOT.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA MADDOX, Plaintiff,	)	
v.	)	No. 94 C 5207
	)	Judge Blanche Manning
CAPITOL BANKERS LIFE INSURANCE COMPANY, et al.,	)	
Defendants.	)	

MODIFIED MEMORANDUM AND ORDER

This matter is before the court on objections of Linda Maddox, plaintiff herein, to Magistrate Judge Edward A. Bobrick's report and recommendation proposing that this court grant the respective motions of the following defendants in this action: Dominick's Finer Foods (Dominick's); the Chicago Tribune (Tribune); the Chicago Sun-Times (Sun-Times); the Chicago Transit Authority (CTA); Capitol Bankers Life Insurance Company (Capitol); Lord Bissell and Brook (LB&B); the Reverend Al Nichols (Nichols); Richard Chaivetz (Chaivetz); J. Daniel and Y. Judd Azulay (Azulays); and Frances and Bruce Nickerson (Nickersons) to dismiss plaintiff's second amended complaint. This court has conducted a de novo review of Magistrate Judge Bobrick's report and recommendation. Fed. R. Civ. P. 72(b); Goffman v. Gross, 59 F.3d 668, 670 (7th Cir. 1995). For the following reasons, this court rejects plaintiff's objections and hereby adopts the report and recommendation. As a result, the defendants' respective motions to dismiss plaintiff's second amended complaint are granted pursuant to Fed. R. Civ. P. 12(b)(6) and plaintiff's second amended complaint is dismissed with prejudice.

BACKGROUND

This court adopts the facts and history of this case as provided by Magistrate Judge Bobrick in his report and recommendation. In this pro

se lawsuit, plaintiff seeks recovery for an alleged conspiracy involving the approximately fifty defendants named in her second amended complaint. In particular, plaintiff's second amended complaint asserts that, since approximately 1980 there has been in effect a widespread conspiracy among the defendants to: prevent her from working in the insurance business, prevent her from continuing her education, demean the education she has already received, interfere with the upbringing of her children and her parental rights, invade her privacy, stalk her, plan various "hits" upon her life, and intimidate her through "theatrical imaging." Plaintiff's second amended complaint also seeks recovery for sex discrimination, mail and wire fraud, and illegal eavesdropping and wiretapping.

Plaintiff brings her seventy-two page second amended twelve count complaint plus an additional twenty-five pages of notations, wherein she cites to several provisions of the United States Code which she alleges have been violated by the conspiracy. Plaintiff alleges violations of: 18 U.S.C. § 241 (conspiracy against rights of citizens); 18 U.S.C. § 245(b)(1)(E) and § 245(b)(4) (federally protected activities); 18 U.S.C. § 16 (definition of violent crime); 18 U.S.C. §§ 1341 (mail and wire fraud); 18 U.S.C. § 2511 (illegal wiretapping); 42 U.S.C. § 1985(2) (obstructing justice, intimidating party, witness or juror); 42 U.S.C. §1985(3) (depriving persons of rights and privileges); 42 U.S.C. §1986 (action for neglect to prevent wrongs conspired to under §1985; and 42 U.S.C. §2000e-2 (unlawful employment practices).

In essence, the factual allegations in plaintiff's second amended complaint focus upon plaintiff's work history, academic pursuits, and homelife. Plaintiff avers that since about 1980, all of the defendants have engaged in a conspiracy against her that has adversely affected these facets of her life. Plaintiff claims that defendants engaged in activity -- ranging from lewd comments and unwarranted criticisms to constructive firings, stalkings, home invasion, discrimination against her based on her gender and/or religion, and acts of violence.

The chronological history of plaintiff's allegations begins in 12980 when plaintiff was, at that time working at Mutual Benefit Life Insurance Company, and has since worked for Capitol, LB&B, Azulay & Azulay, Dardick & Denlow, and B. Angell & Associates. Throughout this period, which spans from approximately 1980 through 1992, plaintiff was subjected to work environments replete with lewd comments and unprofessional treatment. As noted in the report and

recommendation, plaintiff's second amended complaint alleges that she was subjected to, among other acts, the following conduct or comments:

she has, from 1983 to present, been demeaningly referred to as a "car" (¶7);

her husband called her "intrepid" while they were married (n.8);

that a "golden rule essay" which plaintiff was asked to write was in fact a "filling station" which would constitute a sexual invitation (n.1);

when people talk about money, they are talking about sex (¶13);

one of plaintiff's employers stated that "eggs were getting laid and shipped to the city" which plaintiff took as a reference to "out-of-wedlock behavior in Milwaukee" (¶20);

plaintiff was exposed to "black symbolism" implying resentment of plaintiff by blacks who claim to "service" men to whom plaintiff has refused sexual advances (n.9);

plaintiff has been subjected to racist attacks which relate to the fact that there are both black and white Jews and that plaintiff has been accused of being "black" or Egyptian" (¶¶34, 36);

a Jewish woman's comment that she had learned when to stay home (n.21);

repeated use of the innuendoes "second" and "two symbolism" (¶82, n.31-32);

the word "vucko" on the back of a business card which plaintiff understood to mean that she was "some easy, hot number" (¶143);

public harassment by the use of the "see" and "C" puns (¶40, n.45).

Plaintiff alleges that these incidents recurred throughout her various employment changes by way of the conspiracy among the defendants. Plaintiff also asserts that, as part of defendants' conspiracy, defendants populated plaintiff's respective workplaces with "mirror images" or "copies" of people resembling plaintiff's previous employers, their relatives, or other people with whom plaintiff had been acquainted in the past. (¶¶27 and 42).

Plaintiff also avers that the alleged conspiracy extended beyond her working conditions when, on November 24, 1992, plaintiff gave a

speech while in a class at Northwestern University. According to plaintiff, those listening to her misunderstood her use of the phrase "do it" as advocating sexual promiscuity, but, in fact, plaintiff was merely referring to performing one's regular job duties. (¶52). Plaintiff claims that the professor's remarks at the end of the class (went down, went down; I don't want to get mare-eed, that doesn't sound very U-4-ic") confused people as to the point of plaintiff's remarks and, as a result of plaintiff's speech and the remarks made by the professor following the speech, plaintiff was struck by a car the next day which was driven by Leo Vakser (also known as Leon Vakseri). (¶¶53, 55, 59) In addition, plaintiff asserts that she was subjected to the following:

> men on the CTA displaying lewd body language including holding their legs apart in the shape of the Greek letter "lambda" which plaintiff claims is an improvement over blacks screaming "I told her I was going to 'f___' her butt" (n.28);
>
> a professor's writing of the letter "V" on an envelope in connection with plaintiff's fellowship application which suggested a connection between the professor and the individual who was driving the car that hit plaintiff (¶142);
>
> rumor and character defamation perpetrated by, among other things, lewd el-stop graffiti, including an upside-down "A" in the word "base" (¶144);
>
> other lewd el-stop graffiti relating to plaintiff's last speech at Northwestern which "terrorized" plaintiff and communicated that plaintiff had to be reduced to some "B" status if she remained at Northwestern and that an "A" grade plaintiff would receive would be balanced by a "C" grade in order to prevent her from obtaining top grades (¶61);
>
> the Sun-Times headline of "perfect 10" on November 10, 1985, implying some peep show or nudity which is totally untrue of plaintiff although plaintiff did visit the Chicago mikvah on that day (¶89, n.8);
>
> the Tribune's headlines about sticking to some "hot topic" during the few days preceding plaintiff's speech which prejudiced people to believe that plaintiff's speech was about some hot topic or attempted to discourage plaintiff from giving the speech (¶142, n.8);
>
> a dentist telling plaintiff that she would not "have to do it" in reference to root canal surgery (¶121).

Plaintiff's second amended complaint further asserts that the alleged conspiracy extended to blacking plaintiff, not only among potential employers, but also among academic institutions. In addition, plaintiff claims that the conspiracy has reached or affected plaintiff's person life regarding her own psychological well-being and has interfered with the custody of her children (¶66-70, 74, 76) and her ability to attract an appropriate suitor (¶36-37). Plaintiff's second amended complaint seeks damages for lost wagers, rent overpayment, and compensatory damages in the amount of approximately $277,000, punitive damages in the amount of $2,500,000 and various types of injunctive relief. (See second amended complaint at 71-72.)

Dominick's, the Tribune, the Sun-Times, the CTA, Capitol, LB&B, Nichols, Chaivetz, the Azulays, and the Nickersons moved to dismiss plaintiff's second amended complaint on a variety of grounds. The matter was referred to Magistrate Judge Bobrick who issued a report and recommendation suggesting that this court dismiss plaintiff's second amended complaint as to those defendants with prejudice. This memorandum and order addresses plaintiff's objections directed at Magistrate Judge Bobrick's report and recommendation and the propriety of the report and recommendation's conclusions.

ANALYSIS

Standard for a motion to dismiss

Before addressing plaintiff's objections, this court observes the standard to be applied to a motion to dismiss. A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) does not test whether plaintiff will prevail on the merits, but instead whether the claimant has properly stated a claim. See Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974). This court may dismiss a complaint for failure to state a claim only "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." (Hishon vl King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984). In this regard, this court must accept as true all well-pled allegations and draw all reasonable inferences in favor of plaintiff. Perkins v. Silverstein, 939 F.2d 463, 466 (7th Cir. 1991). However, this court need not strain to find favorable inferences which are not apparent on the face of the complaint. Coates v. Illinois St. Bd. of Educ., 559 F.2d 445, 447 (7th Cir. 1977). Similarly, this court is not required to accept legal

conclusions either alleged or inferred from pleaded facts. Nelson v. Monroe Regional Medical Ctr., 925 F.2d 1555, 1559 (7th Cir. 1991). The complaint ened not specify the correct legal theory or point to the right statute to survive a motion to dismiss, provided that "relief is possible under any set of facts that could be established consistent with the allegations." Bartholet v. Reishauer A.G., 953 F.2d 1073, 1078 (7th Cir. 1992). However, the complaint must state either direct or inferential allegations concerning all material elements necessary under the chosen legal recovery. See Glatt v. Chicago Park District, 847 F.Supp. 101, 103 (N.D.Ill. 1994). For the reasons that follow, this court finds that the report and recommendation correctly proposes dismissal of plaintiff's second amended complaint.

Plaintiff specifically objects to Magistrate Judge Bobrick's findings that: (i) plaintiff has attempted to raise claims under federal statutes that do not provide for a private right of action; (ii) plaintiff has failed to satisfy the necessary pleading requirements under 18 U.S.C. §2511, 42 U.S.C. §1985(2) and (3), and 42 U.S.C. §1986; (iii) plaintiff has failed to file a discrimination claim with the Equal Employment Opportunity Commission (EEOC) prior to filing her claim under Title VII; (iv) plaintiff's allegations otherwise fail to raise a claim under Title VII. In addition, plaintiff objects on the ground that Magistrate Judge Bobrick's report and recommendation failed to review the pleadings in the light most favorable to the plaintiff. This court will discuss each of these objection in turn.

Plaintiff's claims based on criminal statutes

As previously noted, plaintiff attempts to bring a portion of her second amended complaint under federal criminal statutes. The report and recommendation proposes dismissal of those portions of plaintiff's action which are based on criminal statutory provisions, finding that 18 U.S.C. §§241 and 245, 18 U.S.C. §1341, and 18 U.S.C. §16, do not provide for a private cause of action and that, although there is a statutorily based civil cause of action for wiretap violations under 18 U.S.C. §2520, plaintiff failed to adequately state such a claim. Plaintiff, however, objects to these findings and argues that there are exceptions to the general rule that there is not a private right of action available under the federal criminal statutes. In this regard, plaintiff points out that there

are private rights of action that are available under the Securities Exchange Act of 1934 (SEC Act of 1934). 15 U.S.C. §78a *et seq.*

This court finds that the SEC Act of 1934 is wholly inapplicable to the provisions at issue and that the magistrate judge correctly proposes dismissal of plaintiff's claims based on criminal statutes. With respect to 18 U.S.C. §§ 241 and 245, which criminalize conspiracies against civil rights, it is well settled that no private right of action for damages is available under these criminal conspiracy statutes. See Lovelace v. Whitney, 684 F.Supp. 1438, 1441 (N.D.Ill. 1988), aff'd sub nom, Lovelace v. Hall, 886 F.2d 332 (7th Cir. 1989); see also Cok v. Cosentino, 876 F.2d 1,2 (1st Cir. 1989) (§ 241); John's Insulation, Inc. v. Siska Constr. Co., 774 F.Supp. 156, 163 (S.D.N.Y. 1991) (§245). Nevertheless, plaintiff maintains that 18 U.S.C. §241 permits a private cause of action because it has been held to encompass "wholly private conspiracies." Plaintiff's argument in this respect is misplaced. Although a private conspiracy may be proscribed under this criminal statute, this fact alone does not translate into an implied private right of action for damages. Compare id. Regardless of the nature of the conspiracy, a cause of action for a violation of this provision may only be brought under this statutory provision by the United States Government as prosecutor. See Cok, 876 F.2d at 2. Consequently, plaintiff's criminal conspiracy claims must be dismissed.

Plaintiff's attempt to raise a claim under 18 U.S.C. § 16 must also fail. This section, which merely provides a definition of a violent crime, states:

> The term "crime of violence" means --
> (a) an offense that has an element: the use, attempted use, or threatened use of physical force against the person or property of another, or
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

It is clear hat this provision is definitional in nature and does not create a cause of action. Compare 18 U.S.C. § 2520. Therefore, plaintiff's claims under this provision must also be dismissed.

Similarly, plaintiff's claim under 18 U.S.C. § 1341 for mail and wire fraud must be dismissed. She asserts that the nature of her claim is such that a lawsuit is the only means by which she can obtain relief for

alleged violations of this provision. Contrary to plaintiff's claim, it is well-established that no private action can arise from this statutory provision. Ryan v. Ohio Edison Co., 611 F.2d 1170, 1178-79 (6th Cir. 1979); Wenzoski v. Citicorp, 480 F.Supp. 1056, 1062 (N.D.Cal. 1979). Since no private right of action exists under 18 U.S.C. § 1341, plaintiff's mail fraud claims must also be dismissed.

Plaintiff also attempts to raise a claim under 18 U.S.C. § 2511, the illegal wiretapping provision. Although no private cause of action exists under this provision, a private right of action does exist for a wiretapping violation under 18 U.S.C. § 2520. However, plaintiff's allegations fall short of stating a claim under 18 U.S.C. § 2520. In plaintiff's objections, she argues that the necessary elements were adequately set forth in her second amended complaint. While it is true that circumstantial evidence may provide a sufficient basis for allegations under this provision, Cross v. State of Alabama, 49 F.3d 1490, 1509 (11th Cir. 1995), (citing Walker v. Davis, 911 F.2d 1573, 1578 (1st Cir. 12990), upon review of plaintiff's allegations, this court fails to find even an iota of circumstantial evidence within the pleadings to support and illegal wiretapping claim.

In order to set forth a civil claim for illegal wiretapping, plaintiff must allege: (1) the interception of her oral communications; (2) an expectation that her oral communications were not subject to interception; and (3) that her expectation was justified under the circumstances. Cross, 49 F.3d at 12508-9, (citing Walker, 911 F.2d at 1577). Although plaintiff may have satisfied the second and third prongs of this test because the communications allegedly intercepted took place within plaintiff's apartment where an expectation of privacy is undoubtedly justified, there are no allegations within plaintiff's second amended complaint which could be read to consist of circumstantial evidence of the interception of plaintiff's private communications required to satisfy the first prong of the test.

In particular, even though plaintiff is apparently of the view that her oral communications were intercepted, she fails to identify the responsible party in her second amended complaint. In her objections, plaintiff asserts that the responsible parties are "unnamed tenants of her apartment building, in the second floor beneath her, through cooperation with the government (CTA), the Jewish community, plaintiff's employers and with the management and/or owner of the building." Even considering these additional assertions put forth in plaintiff's

objection, plaintiff still falls short of pleading the necessary elements. Not only are the parties whom plaintiff claims are responsible for the illegal wiretapping speculative and imprecise, plaintiff neglects to indicate what conversations or other communications she believes to have been intercepted, the possible means employed, or event he bias by which she claims she has been a victim of illegal wiretapping. In other words, plaintiff does no more than state her conclusion that illegal wiretapping has occurred, yet fails to support her position.

The only occurrences plaintiff attempts to cite as a means of supporting her claim are references in her objection to "verboten quotes of those anonymous actors stalking plaintiff to and from her residence and various destinations," without any reference to the content of these quotes, the content of the conversations which were the alleged source of the verbatim quotes, or the individuals who allegedly reiterated these quotes. In addition, plaintiff's objection also refer to "copying, mirror-imaging, wiretapping and eavesdropping for a part of 'conversion practices' administered by the Jewish community," as circumstantial evidence of her claim. Once again, these allegations doe not rise to the level of circumstantial evidence sufficient to support her claim for relief for illegal wiretapping. There is absolutely no direct or circumstantial evidence alleged which links any of the conduct alleged with plaintiff's private communications. As such, plaintiff's claims under 18 U.S.C. § 2511 must also be dismissed.

Additionally, within plaintiff's objections, plaintiff ahs requested leave of the court to address any deficiencies within her complaint under the illegal wiretapping claim. This request is inappropriate as it is raised within her objections. Nevertheless, even if plaintiff's request were properly before the court, it would be denied. While it is true that under Fed. R. Civ. P. 15(a), leave to amend a complaint "shall be freely given when justice so requires," the decision of whether to grant leave to amend a complaint is a matter within the discretion of the trial court. See Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). In considering this issue, plaintiff has failed to elaborate in any way how the fatal flaws within her wiretapping allegations can be cured by amendment. Therefore, plaintiff's request for leave to amend is hereby denied.

Conspiracy Claims under 42 U.S.C. § 1985(2), § 1985(3) and 42 U.S.C. § 1986

Plaintiff raises many of her claims concerning allegations of a conspiracy among a myriad of defendants with the intent to deprive plaintiff of her civil rights in violation of 42 U.S.C. §§ 1985(2) and (3) and 42 U.S.C. §1986. Magistrate Judge Bobrick's report and recommendation found that plaintiff failed to state a claim for conspiracy under these provisions. In plaintiff's objections, however, plaintiff argues that she has adequately pled the required elements of a conspiracy claim. This court will reexamine plaintiff's allegations for their sufficiency.

This court finds that even upon the most generous reading of plaintiff's allegations, plaintiff's second amended complaint does not support a conspiracy among the defendants. The Seventh Circuit has explained that in order for a complaint to adequately aver a civil conspiracy claim, a plaintiff must put forth factual allegations demonstrating a mutual understanding between two or more individuals suggesting a "meeting of the minds" relative to the alleged conspiracy. Kunik v. Racine County Wisconsin, 946 F.2d 1574, 1580 (7th Cir. 1991). Although allegations supporting an agreement between the parties need not be an overt agreement, if the alleged conspiracy is not based on an overt agreement, the factual allegations in support of the conspiracy must be sufficient to raise the inference of a mutual understanding. Id.

In plaintiff's second amended complaint, plaintiff asserts that a conspiracy exists between a diverse group of defendants, including, among others, the ones presently before the court, i.e., Dominick's (a grocery store), the Tribune and Sun-Times (newspapers), the CTA, and several of her former employers. Plaintiff also alleges that this conspiracy has been ongoing over a course of at least fifteen years. However, plaintiff has provided no allegations that these defendants even knew, or came into contact with each other much less conspired together to deprive plaintiff of her civil rights. Plaintiff alleges no nexus between the defendants, beyond her perception that there must be a conspiracy against her. The Seventh Circuit has explained that "a complaint inadequately alleges conspiracy when the facts it alleges are vague, conclusory an include no overt acts reasonably related to the promotion of the alleged conspiracy." Id. (citing Hansen v. Ahlgrimm, 520 F.2d 768, 770 (7th Cir. 1975). At best, plaintiff's allegations are no more than conclusions and, as such, plaintiff's second amended complaint fails to allege the necessary requirement of a meeting of the minds among the alleged conspirators.

Plaintiff argues that her complaint is adequate in that it provides circumstantial evidence which could support the existence of a conspiracy and realleges numerous allegations in her objections to the report and recommendation which she believes supports this position. While it is true that "a plaintiff is not required to provide direct evidence of the agreement between the conspirators, "circumstantial evidence may provide adequate proof of the conspiracy." Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979). However,, as discussed above, plaintiff's complaint alleges not even a trace of circumstantial evidence which could lead a reasonable person to infer that a "meeting of the minds" has in fact taken place. Therefore, plaintiff's claims under 42 U.S.C. §§1985(2) and (3) and 42 U.S.C. § 1986 must be dismissed. Plaintiff has simply not provided factual allegations concerning the formation of the conspiracy.

Moreover, even if plaintiff's conspiracy claims were not deficient, her claims under §§1985(2) and (3) are inappropriate. Under §§1985(2), plaintiff may establish a claim upon a showing of four elements: (1) a conspiracy by the defendants; (2) to injure a party or witness in his or her person or property; (3) because he or she attended federal court or testified in any matter pending in federal court; (4) resulting in injury or damages to plaintiff. Wright v. Illinois Dept. of Children and Family Serv., 40 F.3d 1492, 1507 (7th Cir. 1994). Since plaintiff's allegations do not involve a federal court proceeding, this statute is inapplicable. Likewise, §1985(3) is also inapplicable to the claims set forth by plaintiff. The United States Supreme Court has indicated that in order to state a claim under §1985(3), a plaintiff must establish "some racial, or perhaps otherwise class-based invidiously discriminatory animus." Griffin, 403 U.S. at 102, 91 S.Ct. at 1798. Although plaintiff states that she is a victim of sex, gender, religious and racial discrimination, the factual allegations in her second amended complaint do not support such contentions. Therefore, in addition to the inadequacy of plaintiff's conspiracy claims, plaintiff's claims brought under §§1985(2) and (3) are also dismissed.

Plaintiff's Failure to File a Discrimination Claim With the EEOC Prior to Suit

Plaintiff's second amended complaint also attempts to raise a Title VII claim for discrimination pursuant to 42 U.S.C. § 2000e-2.

Magistrate Judge Bobrick's report and recommendation proposes dismissal of plaintiff's claims based on Title VII, finding, *inter alia*, that plaintiff failed to file administrative charges with the EEOC before filing her complaint. Prior to filing suit under Title VII, a plaintiff must first file a claim with the EEOC and receive a right to sue letter. See United Air Lines, Inc. v. Evans, 431 U.S. 553, 555, 97 S.Ct., 1885, 1887-88, 52 L.Ed.2d 571 (1977); Alexander v. Gardner-Denver Co., 415 U.S. 36, 44, 94 S.Ct. 1011, 1017-18 (1974); Chambers v. American Trans Air, Inc., 17 F.3d 998, 1003 (7th Cir. 1994). In plaintiff's second amended complaint, plaintiff fails to mention a timely filing with the EEOC. However, in her objections, plaintiff asserts that she did in fact file a discrimination claim against one of her former employers, New Trier High School (New Trier) (defendant in this action not presently before the court), in the summer of 1994 and received a right to sue letter in September of 1994. Even though plaintiff alleges that she has received a right to sue letter as to New Trier, plaintiff does not aver that she has received such a letter with respect to the defendants whose motions to dismiss this court now considers. As a result, plaintiff has not sufficiently pled that she may maintain an action against the defendants presently before the court.)

In addition, plaintiff also asserts that her Title VII action against the remaining defendants should survive based upon the doctrines of waiver and equitable tolling. While it is true that "[f]iling a timely disharge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement like a statute of limitations, is subject to waiver, estoppel, and equitable tolling," Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234 (1982), the burden still falls upon plaintiff to establish that any of the above exceptions are appropriate in this case. Plaintiff argues in her objections that the period should be tolled to include incidents which occurred as far back as 1980 at positions she held far prior to the one she held at New Trier. Plaintiff also apparently includes defendants who were at no time her employers, or potential employers, within this claim as well. However, according to the allegations set forth inthe second amended complaint, plaintiff was seemingly aware of the facts long before the filing in 1994. Additionally, plaintiff would be compelled to establish a connection between her former employers for tolling to be applied to this case. It is well established that the limitations period is tolled until facts that would support a charge of

discrimination are apparent to persons with a reasonably prudent regard for his rights similarly situated to plaintiff. Mull v. ARCO Durethene Plastics, Inc., 784 F.2d 284, 291 (7th Cir. 1986). As discussed above, plaintiff has failed to allege any facts supporting a conspiracy or other connection between the defendants in this case. It is therefore unlikely that the facts of this case would support the use of tolling. However, the court need not reach this issue at this time, for as discussed below, plaintiff has failed to allege facts sufficient to support a Title VII claim for discrimination.

Plaintiff Fails to State a Claim Under Title VII

The type of conduct which is actionable under a Title VII hostile environment sex discrimination claim must be such that it is "sufficiently severe or pervasive to alter the conditions of employment and create an abusive environment." Koelsch v. Beltone Elc. Corp., 46 F.3d 705, 708 (1995), (quoting Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49 (1986). Isolated and innocuous incidents do not support a finding of sexual harassment. Id. In Harris v. Forklift Systems, Inc., 510 U.S. 17, 23, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993), the United States Supreme Court indicated that factors relevant to determining whether an environment is "hostile" or "abusive" include: the frequency of the discriminatory conduct; its severity; whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and whether the conduct unreasonably interferes with an employee's work performance. Although a plaintiff's subjective perceptions of the alleged abuse environment is relevant, the Supreme Court in Harris also indicated that the inquiry into whether an environment is hostile and abusive requires an evaluation from not only a subjective, but also an objective, perspective. Harris, 510 U.S. at 21, 114 S.Ct. at 370. The Court stated that "[c]onduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive -- is beyond Title VII's purview." Id.

The conduct alleged by plaintiff in her second amended complaint is a far cry from the severe or pervasive conduct that is within the scope of Title VII. Plaintiff's allegations include instances such as referring to plaintiff as a "car," connotations that plaintiff was "black" or "Egyptian," remarks that plaintiff should "stay home," as well as the use

of metaphors, "mirror-imaging," and "theatricals." Plaintiff argues in her objections that this behavior was constant and ongoing. However, despite plaintiff's arguments to the contrary, this conduct is not severe and does not rise to the threshold level of sexually discriminatory or harassing conduct. Although such comments and perceived behavior may have been upsetting to plaintiff, "[t]he fact is , 'Title VIII is not directed against unpleasantness, per se, but only against discrimination in the conditions of employment." Koelsch, 46 F.3d at 708, (quoting Carr v. Allison Gas Turbine Div., Gen Motors Corp., 32 F.3d 1007, 1009 (7th Cir. 1994)). "'[The] mere utterance of an epithet which engenders offensive feelings in an employee, does not sufficiently affect the conditions of employment to implicate Title VII.'" Harris, 510 U.S., at 114 S.Ct. 367, 370 (1993), (quoting Meritor, 477 U.S. at 67).

This court must also examine the situation to objectively determine if a reasonable person, in plaintiff's position, would have been similarly affected by the alleged discriminatory and harassing conduct. In so doing, this court considers not only the actual effect of the harasser's conduct on his victim, but also the effect similar conduct would have had on a reasonable person in the plaintiff's position. Dey v. Colt Constr. & Dev. Co., 28 F.3d 1446, 1454 (7th Cir. 1994). This assessment, however, only weakens plaintiff's position. This court is of the view that a reasonable person would not have been adversely affected by the conduct alleged in the plaintiff's second amended complaint and the objections. In fact, as indicated by Magistrate Judge Bobrick in this Report and Recommendation, it is highly unlikely that a reasonable person would have been offended by the alleged conduct and it is also unlikely that a reasonable person would have made the connections between common work place banter and the complex metaphors and biblical references that were so perceived by plaintiff. No matter how liberally construed, it is clear that plaintiff's allegations do not create a claim which is within the purview of Title VII. Therefore, these claims must be dismissed.

The Magistrate Judge's Review of Plaintiff's Claims

Throughout plaintiff's objections, plaintiff argues that Magistrate Judge Bobrick's report and recommendation failed to review the facts in a manner most favorable to the plaintiff, particularly considering the fact that plaintiff appears pro se. This court, however, finds that Magistrate

Judge Bobrick has steadfastly adhered to this standard and has considered plaintiff's second amended compliant fairly and generously. The report and recommendation observed, and this court agrees, that allegations of a pro se plaintiff are held to less stringent standards than formal pleadings drafted by lawyers and, as such, allegations in the complaint of a pro se plaintiff are to be liberally construed. Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir. 1996). In a situation involving a pro se plaintiff, this court must "read the pro se party's supporting papers liberally and will interpret them to raise the strongest arguments that they suggest." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972) (per curiam). Nonetheless, a pro se complaint, like any other, must present a claim upon which relief may-be granted. See Sheahan, 81 F.3d at 1427-28. Even when dealing with pro se litigants, this court need not accept inferences drawn by plaintiff if such references are unsupported by the facts set forth in the complaint and need not accept legal conclusions cast in the form of factual allegations. Henthorn v. Dept. of Navy, 29 F.3d 682, 684 (D.C.Cir. 1994), (quoting Kowal v. MCI Communications Corp., 16 F.3d 1271, 1276 (D.C.Cir. 1994). The fact remains, however, that in this case plaintiff's second amended complaint, even when liberally construed, cannot meet the requirements of Fed.R.Civ.P. 8(a) and therefore, Magistrate Judge Bobrick's review was proper.

Lastly, in a similar argument, plaintiff argues that the court has also failed to consider other possible cause s of action which may be applicable under the facts, yet not apparent to plaintiff. This court, however, finds no cause of action which may be pursued under plaintiff's second amended complaint. As a result, this objection to the report and recommendation is also rejected.

CONCLUSION

For the foregoing reasons, this court adopts the Magistrate Judge Bobrick's report and recommendation. Pursuant to Fed.R.Civ.P. 12(b((6), all counts of plaintiff's second amended complaint are dismissed with prejudice.

ENTER:

s/ Blanche M. Manning
United States District Judge

DATED: January 28, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA MADDOX, Plaintiff,	)	
v.	)	No. 94 C 5207
	)	Judge Blanche Manning
CAPITOL BANKERS LIFE INSURANCE COMPANY, et al.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

[The text of this opinion is identical to the MODIFIED MEMORANDUM AND ORDER, *supra*, with the exception of the conclusion, *infra*.]

CONCLUSION

For the foregoing reasons, this court adopts the Magistrate Judge Bobrick's report and recommendation. The above named defendants' motions to dismiss are therefore granted and plaintiff's second amended complaint is dismissed as to those defendants with prejudice, pursuant to Fed.R.Civ.P. 12(b)(6) as to all counts of plaintiff's second amended complaint which pertain to the referenced defendants.

ENTER:

s/ Blanche M. Manning
United States District Judge

DATED: December 16, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA MADDOX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 94 C 5207
	)	
CAPITOL BANKERS LIFE INSURANCE CO., *et al.*,	)	
	)	
Defendants.	)	

HONORABLE BLANCHE M. MANNING, JUDGE
UNITED STATES DISTRICT COURT

HONORABLE JUDGE:

REPORT AND RECOMMENDATION
Of Magistrate Judge Edward A. Bobrick

Before the court are the motions of the following defendants to dismiss the Second Amended Complaint of plaintiff Linda Maddox: Dominick's Finer Foods ("Dominick's"); the Chicago Tribune ("Tribune"); the Chicago Sun-Times ("Sun-Times"); the Chicago Transit Authority ("CTA"); Capitol Bankers Life Insurance Company ("CBL"); Lord Bissell & Brook ("LBB"); the Reverend Al Nichols; Richard Chaivetz; J. Daniel and Y. Judd Azulay; and Frances and Bruce Nickerson.

I. BACKGROUND

A. Plaintiff's Allegations

Plaintiff, proceeding *pro se*[1], brings her second amended complaint ("2AC") under 18 U.S.C. §§ 241, 245(b)(1)(E) and

[1] The court has made five successive appointments of counsel for plaintiff.

245(b)(4)[2]; 42 U.S.C. §§ 1985(2), 1985(3), and 1986[3]; 42 U.S.C. §2000e-2 ("Title VII")[4]; 18 U.S.C. § 16[5]; 18 U.S.C. ; 18 U.S.C. § 1341 *et seq.*[6]; and 18 U.S.C. § 2511.[7] Her 2AC comprises twelve counts spread over seventy-two pages, with an additional twenty-five pages of notations. She names some fifty defendants, which include former employers and co-workers, a university, a high school, the City of Chicago, the Chicago Transit Authority ("CTA"), the Chicago Police Department, religious and civic organizations, religious counselors, health-care providers, newspapers, grocery stores, drug stores, a printing and copying shop, a dating service, groups of tenants at two apartment buildings, and her ex-husband. Plaintiff charges these defendants with engaging in a conspiracy against her, from approximately 1980 to date, that adversely affected her employment, academic pursuits, and family life. She claims the defendants engaged in activity – ranging from lewd comments and unwarranted criticisms to constructive firings, stalking, home invasion, and acts of violence – that discriminated against her because she was a Jewish woman. The aforementioned defendants now move to dismiss plaintiff's 2AC in its entirety pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff's 2AC essentially focuses on her work history, her academic

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[2] These provisions are criminal statutes prohibiting conspiracy against civil rights; §§ 245(b)(1)(E) and 245(b)(4) specifically refer to intimidation of persons participating in or enjoying the benefits of any program receiving federal aid, and of persons so doing without discrimination on the basis of race, color, religion, or national origin.

[3] These provisions allow an action for damages incurred by a conspiracy that obstructs justice or intimidates a party from enforcing its rights in court or a conspiracy that deprives a person of rights or privileges of a United States citizen.

[4] This provision creates a cause of action to redress discriminatory employment practices.

[5] This provision of the federal criminal statute defines a crime of violence.

[6] This provision is the federal mail and wire fraud statute.

[7] Plaintiff actually cites a non-existent statute, 42 U.S.C. § 2511, in her second amended complaint.

pursuits, and her homelife. She claims these facets of her life have all been adversely affected by a far-reaching and long-standing conspiracy among the defendants. We begin our summary of plaintiff's complaint with her work history, which for the purposes of this case, begins in 1980. Plaintiff was, at that time, working at Mutual Benefit Life Insurance Company, and has since worked for CBL, LB&B, Azulay & Azulay, Dardick & Denlow, and B. Angell & Associates. Throughout this period, running from 1980 until 1992[8], plaintiff was subjected to work environments replete with lewd comments and unprofessional treatment. For example, she alleges that she was subjected to the following conduct or comments:

> she has, from 1983 to present, been demeaningly referred to as a "car" (2AC at ¶ 7) – her husband called her "intrepid" while they were married (2AC, note 8);
>
> that a "golden rule essay" was a "filling station" which would constitute a sexual invitation (2AC, note 1);
>
> that when people talk about money, they are talking about sex (2AC at ¶ 13);
>
> that "eggs were getting laid and shipped to the city," which plaintiff took as reference to "out-of-wedlock behavior in Milwaukee" ¶ 20);
>
> "black symbolism" implying resentment of plaintiff by blacks who claim to service men whom plaintiff has refused (2AC, note 9);
>
> that plaintiff was "black" or "Egyptian" (2AC at ¶¶ 34, 36);
>
> a Jewish woman's comment that she had learned when to stay home (2AC, note 21);
>
> repeated use of the innuendo, "second," and "two symbolism" (2AC at ¶ 82, notes 31-32, 34);
>
> the word "vucko" on a business card, meaning plaintiff was "some easy, hot number" (2AC at ¶ 143);
>
> the use of the "see" and "C" pun (2AC at ¶ 40; note 45);

According to plaintiff, these incidents recurred throughout her various

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[8] Sometime after her last work experience, plaitniff was found disabled – unable to engage in substantial gainful activity, 42 U.S.C. § 423 – and receives Social Security Disability Insurance Benefits. (2AC at ¶¶96-97)

employment changes by way of the conspiracy among the defendants. Indeed, through the defendants' technique of "copying," each workplace was populated with "copies" of people plaintiff had previously encountered. (2AC at ¶¶ 27, 42, 43). The defendants also repeatedly employed the techniques of "mirror imaging" (2AC at ¶¶ 27, 32, 47, 68, 79) and "theatricals" (2AC at ¶¶ 31, 47, 65, 68).

The alleged conspiracy extended beyond plaintiff's working conditions when, on November 24, 1992, plaintiff gave a speech about Charles Dickens' Little Dorritt in her Northwestern University class. According to plaintiff, those listening misunderstood her use of the phrase "do it" as advocating sexual promiscuity; in fact, plaintiff was referring to "doing one's job." (2AC at ¶ 52). Because her professor's comments after the speech ("went down; I don't want to get mare-eed; that doesn't sound u-4-ic") confused people, as to the point of plaintiff's remarks, plaintiff was struck by car the next day, driven by Leo Vasker (Leon Vaskeri [sic]). (2AC at ¶¶ 53, 55, 59). She was also subjected to the following:

> men on the CTA holding their legs in the shape of the Greek letter "lambda" (2AC, note 28);
>
> the letter "V" on an envelope, which suggested a connection between a professor and an individual who "attacked plaintiff by car" (2AC at ¶ 142);
>
> lewd el-stop graffiti, including an upside-down "A" in the word "base" (2AC at ¶ 144);
>
> CTA graffiti employing the letter "B" thereby suggesting that plaintiff should did [sic] not deserve a top grade (2AC, ¶ 61);
>
> the Chicago Sun-Times headline of "Perfect 10" on November 10, 1985, which implied some peep show or nudity which is totally untrue of plaintiff although she visited the Chicago Mikvah on that day (2AC at ¶ 89; note 8);
>
> the Chicago Tribune headline of "____ Sticks to Hot Topic" in the days before the speech (2AC at ¶ 142; note 8);
>
> a dentist telling plaintiff she might not "have to do it" in reference to root canal surgery (2AC at ¶ 121)

The conspiracy has extended to a blacklisting of plaintiff, not only among potential employers, but among academic institutions as well. It has also reached or affected plaintiff's personal life regarding custody of her children (2AC at ¶¶ 66-70, 74, 76, Count IV), and her

ability to attract an appropriate suitor (2AC at ¶¶ 36-37). As a result, plaintiff seeks damages for lost wages, rent overpayment, and compensatory damages in the amount of approximately $277,000, punitive damages in the amount of $2.5 million, and various types of injunctive relief.

B. Defendant's Arguments

Many of the defendants have now moved for dismissal of plaintiff's complaint, advancing various arguments. First, they point out that plaintiff brings claims under several federal criminal statutes which do not provide for civil causes of action. Next, they argue that plaintiff has not complied with Title VII's statutory requirements in her attempt to bring claims under that provision. Finally, they contend that plaintiff has failed to adequately state a cause of action for conspiracy under the various civil rights statutes upon which she relies. We assess plaintiff's allegations in light of these arguments.

II. ANALYSIS

A. Motion to Dismiss

The Seventh Circuit has recently reiterated the principles that guide evaluation of plaintiff's pro se complaint:

> We accept all the factual allegations in the complaint and draw all reasonable inferences from these facts in favor of the plaintiff. A claim may be dismissed only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief. Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. Accordingly, *pro se* complaints are to be liberally construed.

Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir. 1996). We have taken pains to follow these precepts in our attempt to understand and assess plaintiff's allegations. Many of plaintiff's charges seemed to have escaped the defendants and, indeed, they can be said to be obscure. With the principles regarding pro se pleadings in mind, however, we evaluate plaintiff's complaint in this case.

B. Allegations of Criminal Conspiracies, Mail and Wire Fraud, Acts of Violence and Eavesdropping

As a preliminary matter, we note that plaintiff attempts to bring a portion of the 2AC under federal criminal statutes, which generally will not be construed as providing for private causes of action. *Central Bank v. First Interstate Bank*, -- U.S. --, --, 114 S.Ct. 1439, 1455 (1994). More specifically, plaintiff cannot bring private claims for damages under 18 U.S.C. §§ 241 and 245, which criminalize conspiracies against civil rights. *Cok v. Cosentino*, 876 F.2d 1, 2 (1st Cir. 1989) (Section 241); Risley v. Hawk, 918 F.Supp. 18, 21 (D.D.C. 1996) (Section 241); *John's Insulation v. Siska Const. Co.*, 774 F.Supp. 156, 163 (S.D.N.Y. 1991) (Section 245). Similarly, she cannot bring a claim under the mail and wire fraud statutes, 18 U.S.C. §1341 et seq. *Ferch v. Butterworth*, No. 94 C 2580 (N.D.Ill. Aug. 9, 1994); *Abbott Group Ltd. v. Amoco Venture Capital Co.*, No. 86 C. 2145 (N.D.Ill. Sept. 29, 1986). Another statute plaintiff cites, 18 U.S.C. § 16, is merely a definition of a violent crime, and provides neither a cause of action nor a criminal prohibition. Insofar as any of plaintiff's claims are based on these criminal statutes, they must be dismissed.

Plaintiff brings Count XII of her complaint under yet another criminal provision, 18 U.S.C. § 2511, which covers illegal wiretapping. Unlike plaintiff's other claims, there is a civil cause of action for a wiretap violation under 18 U.S.C. § 2520. Section 2520 provides that "any person whose wire, oral, or electronic communication is intercepted . . . may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate." 18 U.S.C. § 2520(a). The elements of such a claim are that: (1) the defendants intercepted plaintiff's oral communication; (2) plaintiff had an expectation that her oral communications were not subject to interception; ;and (3) her expectation was justified under the circumstances. *Cross v. State of Ala.*, 49 F.3d 1490, 1508 (11th Cir. 1995). Review of plaintiff's Count XII allegations demonstrates that she has failed to adequately state a claim.

Plaintiff conclusorily alleges that she has been victimized by wiretapping. She makes no mention of a responsible entity, but merely

alleges that her landlord should have known about it.[9] Furthermore, she also alleges that the phone company had to repair her phone because it did not work do [sic] to vandalism – an allegation that somewhat undermines her wiretapping claims. In short, we must find that plaintiff has failed to adequately allege a wiretapping claim under 18 U.S.C. §2520.

C. Allegations Under Title VII

Plaintiff brings a portion of her claims – specifically Counts III, VIII and IX – under Title VII, 42 U.S.C. § 2000e-2, alleging not only employment discrimination in the nature of hostile working environments, but that the alleged conspiracy among the defendants resulted in her being "blacklisted" from employment in the insurance industry and in Ph.D. programs. These claims suffer from one obvious fatal flaw and a less apparent defect as well.

First, it is apparent from plaintiff's 2AC and accompanying submissions that she has never filed administrative charges with the Equal Employment Opportunities Commission ("EEOC") against any of the defendants. Filing an EEOC charge is a prerequisite for a lawsuit under Title VII. *Chambers v. American Trans Air, Inc.*, 17 F.3d 998, 1003 (7th Cir. 1994). Of course, a *timely* filing of a charge is not a jurisdictional prerequisite – it is subject to equitable tolling *Zipes v. Trans World airlines, Inc.*, 455 U.S. 385, 394, 102 S.Ct. 1127, 1133 (1990). This would excuse tardiness in situations where a plaintiff filed a defective pleading during the applicable period, or where the plaintiff's adversary has deceived the plaintiff into allowing the time-period to pass. *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 457-58 (1990); *Ballard v. Sercon*, 846 F.2d 463, 468 b(7th Cir. 1987). Plaintiff makes no such allegations here, and even if she did, they would be unavailing. Equitable tolling is simply inapplicable here because plaintiff has *never* filed an EEOC charge. *Ballard*, 846 F.2d at 468. Accordingly, her Title VII claims must be dismissed.[10]

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[9] To the extent plaintiff's allegations could be interpreted as blaming the alleged conspiracy for the purported wiretapping,, such allegations are addressed i*nfra* at xx.

[10] In response to some of the defendants' motions to dismiss, plaintiff raises the "continuing violation doctrine." This doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act within the limitations period. *Koelsch*

Even if this fatal deficiency to her complaint were ignored, however, plaintiff's Title VII allegations would have to be dismissed. It is clear from her 2AC that plaintiff considers herself a highly moral individual (2AC at 23, 34, 52, 55, 64, 82, 89, 101, 113, 132, 134) who, as a result, might have a lower tolerance for conduct that has become accepted, or at least commonplace, in our society and workplaces. Title VII is not violated by unpleasantness in the workplace. *Koelsch*, 46 F.3d at 708. Title VII is violated when the workplace is permeated with discriminatory intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment. *Harris v. Forklift Sys., Inc.*, -- U.S. --, --, 114 S.Ct. 367, 370 (1993). The *Harris* court stated that factors relevant to evaluation of the alleged conduct include frequency of conduct, severity, whether it is physically threatening or humiliating, or merely an offensive utterance, and whether it unreasonably interferes with an employee's work performance. *Id.* At --, 114 S.Ct. at 371. *Harris* also requires evaluation from not only a subjective, but an objective viewpoint:

> Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond Title VII's purview.

Id. at -- , 114, S.Ct. at 371. Accordingly, we must consider not only the actual effect of the alleged conduct on the plaintiff, but the effect similar conduct would have on a reasonable person in plaintiff's position. *Dey v. Colt Const. & Development Co.*, 28 F.3d 1446, 1454 (7th Cir. 1994). While we will not question whether the ten years of employment-related conduct of which plaintiff complains has had an adverse effect on her,

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v. Beltone Electronics Corp., 46 F.3d 705, 707 (7th Cir. 12995). Once again, application of the doctrine requires that a plaintiff actually file an EEOC charge. *Id* Even if we extrapolate on plaintiff's situation, however, the doctrine would not help her. The 2AC indicates that plaintiff last worked in March of 1992. (2AC at ¶ 87 . The most recent allegation of employment discrimination plaintiff makes, then, would have occurred at that time. In Illinois, a plaintiff must file an EEOC charge within 300 days of the alleged discrimination. *Koelsch*, 46 F.3d at 707. Here, plaintiff did not file her lawsuit until more than two years had passed, in August of 1994, well after the time-period had run. Even the most generous consideration of plaintiff's circumstances, then, would nevertheless dictate dismissal of her Title VII claims.

we cannot find that it was sufficiently severe or pervasive to create an environment that a reasonable person would find hostile or abusive.

Simply put, plaintiff's list of symbols, puns, and metaphors, be they letters of the alphabet, numbers or other references would not offend a reasonable person to the extent that they would find their work environment hostile or abusive. We suggest that many reasonable persons would not even understand the comments or, for example, take offense at being called a car, make the connections that plaintiff is able to make between essays, filling stations, and sexual invitations, or comprehend "two" or black" symbolism. Courts have ruled that conduct far more objectively crude that this did not create a hostile workplace. *Koelsch*, 46 F.3d at 708 (sexual advances along with sexually suggestive jokes and pranks); *Saxton v. American Telephone and Telegraph Co.*, 10 F.3d 526, 533-34 (7th Cir. 1993) (two incidents of inappropriate remarks and uninvited touching); *Weiss v. Coca-Cola Bottling Co.*, 990 F.2d 333, 337 (7th Cir. 1993) (several incidents of unwanted touching and unwelcome advances). The Seventh Circuit has even called into question whether the repeated use of the word "bitch" – which, at first blush, would seem to be objectively offensive – would constitute sexual harassment , or a gender slur. *Galloway v. General Motors Service Parts Oper.*, 78 F.3d 1164, 1167-1168 (7th Cir. 1996). The comments of which plaintiff complains simply fall short of being sufficiently hostile from an objective standpoint.

One can sense that the gravamen of plaintiff's employment claims is not only that she was repeatedly offended, but that she was treated in a less than professional manner. There is the intimation that plaintiff's employers – and, indeed, organizations espousing her religion – held an attitude that a woman's place was in the home. Allegations of "hostile, inferior, unprofessional" treatment or being subjected to repeated comments regarding the availability of a husband "to fall back on" do not rise to the level or sexual harassment. *Cheek v. Western and Southern Life Ins. Co.*, 31 F.3d 497, 504-505 (7th Cir. 1994). Thus, no matter how plaintiff's allegations are interpreted, or what degree of liberal consideration is applied to her complaint, she has fallen far short of adequately stating a claim under Title VII. Her claim must be dismissed even if her failure to comply with filing requirements were ignored.

D. Conspiracy Allegations

The balance of plaintiff's claims are based on the alleged conspiracy among the defendants to violate her civil rights under 42 U.S.C. §§ 1985(2); 1985(3); and 1986. All three sections are dependent upon the allegation of a conspiracy. The Seventh Circuit has stated that, in order for a complaint to adequately state a civil conspiracy claim:

> [t]here must be allegations that the defendants directed themselves toward an unconstitutional action by virtue of a mutual understanding. Even were such allegations to be made, they must be further supported by some factual allegations suggesting a "meeting of the minds."

Kunik v. Racine County, Wis., 946 F.2d 1574, 1580 (7th Cir. 1991). The court explained "meeting of the minds" as requiring "an agreement . . . [which] need not be overt, but if not, the alleged facts must be sufficient to raise the inference of mutual understanding. *Id.* "Acts performed together by members of the conspiracy are adequate when they are unlikely to have been undertaken without an agreement." *Id.* "Finally, a whiff of the alleged conspirators' assent cannot await discovery but must be apparent in the complaint." In this case, we must find that plaintiff has failed to adequately allege a conspiracy, or the facts from which one could be inferred.

Plaintiff's complaint is devoid of even a conclusory allegation that the defendants agreed to undertake, in concert, the actions of which she complains. The only allegations that can be stretched to allow the speculation – not even interpretation – of concerted action among defendants are those dealing with the "copying" of persons, "imaging techniques," and "theatricals." We must find such claims to be inadequate to allege a conspiracy.

Furthermore, there does not appear to have been an opportunity among the defendants to have reached such an agreement – at least not among those defendants that did not work together for the same employer. To the extent that plaintiff attempts to allege that co-employees at her various workplaces conspired together, such claims are inadequate. *Wright v. Ill. Dept. of Children & Family Services*, 40 F.3d 1492, 1506 (7th Cir. 1994). Simply put, none of plaintiff's allegations, however, liberally construed, allow for the inference of a 15-year conspiracy among her employers, the City, the CTA, a university, the

press, grocery stores, her ex-husband, and others in violation of 42 U.S.C. §§ 1985(2), 1985(3) or 1986.

Even if plaintiff had adequately alleged a conspiracy, there are other flaws in her complaint that require dismissal of her conspiracy-based claims. Section 1985(2) deals with conspiracies to deny a plaintiff access to federal court. In order to state a claim under § 1985(2), the plaintiff must allege:

1) a conspiracy by the defendants;
2) to injure a party or witness in her person or property;
3) because she attended federal court or testified in any matter pending in federal court;
4) resulting in injury or damages to the plaintiff.

Wright v. Ill. Dept. of children & Family Services, 40 F.3d 1492, 1507 (7th Cir. 1994). Section 1985(2) also provides a cause of action for denial of access to state courts. Id. A state-court claim requires an allegation of class-based animus; a federal-court claim does not. Id. Plaintiff's § 1985(2) fails on various grounds.

The only allegation in plaintiff's complaint touching on any court proceeding involves a 1987 Massachusetts state court case. That case was not a federal proceeding, so it is not covered by that aspect of § 1985(2). Id. She makes no allegation regarding the prevention of her attendance or testimony at that proceeding which is required to state a claim under either aspect of § 1985(2). Id. Furthermore, the applicable statute of limitations on such a claim is two years, *Wilson v. Giesen*, 956 F.2d 738, 741 (7th Cir. 1992); *Horton v. Marovich*, 925 F.Supp. 540, 544 (N.D.Ill. 1996), which had long since passed by the time plaintiff filed her 2AC in 1994.

Turning to plaintiff's § 1985(3) claim, plaintiff must plead some type of "racial, or perhaps otherwise class-based invidiously discriminatory animus [lay] [sic] behind the conspirators' action." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, --, 113 S.Ct. 753, 758 (1993) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 17990, 1798 (1971)). While plaintiff claims to be a victim of discrimination because she is a woman and Jewish, her factual allegations tend to undermine such a claim. As noted in our discussion regarding plaintiff [sic] Title VII claims, plaintiff's victimization appears due to her moral sensitivity rather than religion or gender. Her repeated moral outrage at the conduct of the various defendants is well delineated in the 2AC. (2AC ¶¶ 19, 23, 34, 52, 55, 64, 82, 89, 101, 113, 132,

134). She has no tolerance for adultery, promiscuity, or comments regarding same. While admirable, this does not define class-based discrimination.

This flaw in plaintiff's allegations is yet another reason for dismissal of her conspiracy claims.

III. CONCLUSION

It is clear from the most generous reading of plaintiff's complaint that she has failed to state any claim against the defendants, moving or otherwise, under federal law. It is apparent that plaintiff would not be able to state a claim to redress the wrongs she has allegedly suffered under federal law. The law is simply not designed to protect the sensibilities of individuals such as the plaintiff – it cannot be taken that far. Accordingly, plaintiff's federal claims should be dismissed as to all defendants with prejudice. To the extent that the 2AC includes allegations regarding state law claims, those claims should be dismissed as to all defendants pursuant to 28 U.S.C. § 1367(c).

For the foregoing reasons, it is her3eby recommended that plaintiff's Second Amended complaint be dismissed with prejudice as to all defendants.

Respectfully submitted,

S/ Edward A. Bobrick
United States Magistrate Judge

DATE: July 17, 1996

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn,* 474 U.S. 140 (1985); *The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258 (7th Cir. 1989).

TEXT OF CITED AUTHORITIES

Constitutional Amendment I (BILL OF RIGHTS):

> "Congress shall make no law respecting any establishment of religion, or prohibiting the free exercise thereof, abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Constitutional Amendment IV (BILL OF RIGHTS):

> "The Right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Constitutional Amendment V (BILL OF RIGHTS):

> "No person shall be . . . deprived of life, liberty or property, without the due process of law; . . ."

Constitutional Amendment XIII:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Constitutional Amendment XIV:

> "Section 1: [No State] shall . . . deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Federal Criminal Code:

18 USC § 241: "If two or more persons conspire **to injure, oppress, threaten or intimidate** any inhabitant of any state, territory, or District in the **free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States**, or, because of his having so exercised the same; or

"If two or more persons **go** in disguise on the highway, or **on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured** -- . . ."

18 USC § 245(b): "**Whoever**, whether or not acting under color of law, by force or **threat of force willfully injures, intimidates or interferes** with, or **attempts to injure, intimidate or interfere** with --

> (1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from (E) **participating in or enjoying the benefits of any program or activity receiving Federal financial assistance**; or
>
> (2) **any person because of his race, color, religion or national origin** and because he is or has been -- (C) **applying for or enjoying employment, or any perquisite thereof, by any private employer** or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall or employment agency; . . . or (E) **traveling in or using any facility of interstate commerce (CTA)** or using any vehicle, terminal, or facility of any common carrier by motor, rail, water or air; . . ."

Civil Rights Act of 1866, codified as 42 USC § 1981; Ku Klux Act of 1871, codified as 42 USC §§ 1983, 1985(2) and (3):

42 USC § 1981: (a) "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

(b) The term "make and enforce contracts" includes the making, performance, modification, and termination of contracts and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

(c) The rights protected by this section are protected against impairment by nongovernment discrimination and impairment under color of state law. [The CRA was enacted to support citizens of the United States entitled to the rights and privileges enumerated, and that to deny to any such citizen equality in these rights and privileges with others was, to the extent of the denial, subjecting him to an involuntary servitude. Case law has since established "race" rather than "color" as the criterion, and "slavery" or "servitude" is the condition to be prevented, no matter what the color of one's skin. (USCA, note 1, p.618)]

42 USC § 1983: Every person, who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the **deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress**. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC § 1985:

> (2) If . . . two or more persons conspire for the purpose of impeding, hindering, obstructing, or **defeating, in any manner, the due course of justice** in any State or Territory, with intent to **deny to any citizen the equal protection of the laws**, or to **injure him or his property** for lawfully **enforcing, or attempting to enforce, the right of any person**, or class of persons, **to the equal protection of the laws**,
>
> (3) If two or more persons in any State or Territory **conspire**, or go in disguise on the highway or on the premises of another, for the purpose of **depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws**, or of **equal privileges and immunities under the laws,** or for the purpose of **preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the law**, or if two or more persons conspire to . . . injure any citizen in person or property on account of [lawful political] support or advocacy; . . .
>
> [and any such conspiracy causes another to be] **injured** in his person or property, or **deprived of having and exercising any right or privilege** of a citizen of the United Sates, the party so injured or deprived may have an **action for the recovery of damages**, occasioned by such injury or deprivation, against any one or more of the conspirators."

Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979): Conspiracy means "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principle element of which is agreement between the parties."

Civil Rights Act of 1964, Title VII, codified as 42 USC § 2000e:

> 42 USC § 2000e-2(a)(1): "It is an unlawful employment practice for an employer to **discriminate against any individual** with respect to his compensation, terms, **conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin."**
>
> 42 USC § 2000e(b): An employer is any "person engaged in an industry affecting commerce and any agent of such person."
>
> 42 USC § 2000e(j): Religion means "all aspects of religious observance and practice, as well as belief"

Code of Federal Regulations, Chapter 29:

> 29 CFR § 1604.11(a): Sexual harassment means "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . [when] such conduct has the **purpose or effect of** unreasonable **interference with an individual's work performance** or creating an **intimidating, hostile or offensive working environment**.

Meritor v. Vinson, 477 U.S. 57, 67 (1985) Title VII is violated 'when [the environment] is permeated by discrimination, ridicule and insult that is sufficiently severe or pervasive as to alter the condition of the victim's employment and to create an abusive working environment'

Harris v. Forklift, 114 S.Ct. 367, 371 (1993) Conduct that "detracts from job performance, discourages remaining on the job, keeps employees from advancing in their career," . . . "without regard to tangible effects, . . . conduct so severe that it creates a work environment abusive to employees because of race, gender, religion or national origin, offends Title VII's broad rule of workplace equality"

Age Discrimination in Employment Act of 1967, codified as 29 USC §623

> 29 USC § 623: "It shall be unlawful for an employer -- 1) to fail or **refuse to hire or to discharge** any individual or otherwise **discriminate against** any individual with respect to his **compensation, terms, conditions or privileges of employment, because of such individual's age**; -- 2) to **limit, segregate or classify** his employees **in any way which would deprive or tend to deprive any individual of employment opportunity** or otherwise adversely affect his status as an employee because of such individual's age; or 3) to **reduce the wage rate** of any employee in order to comply with this Act. . . ."

Educational Amendments of 1972, Title IX, codified as 20 USC § 1681, *et seq*

> 20 USC § 1681, *et seq*: (a) "No person in the United States shall, on the **basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any educational program** or activity receiving Federal financial assistance." (excepting private religious schools, etc.)

Women's Educational Opportunities Act of 1988, codified as 20 USC § 3041, *et seq*

> 20 USC § 3041, *et seq*: (b)(2) "The purpose of this part is **to provide educational equity for women** in the United States and to provide **financial assistance** to enable educational agencies and institutions to meet the requirements of Title IX of the Educational Amendments of 1972 (20 USCA § 1681 *et seq.)*. Also, the purpose of this part is to provide **educational equity for women and girls who suffer multiple discrimination, bias or stereotyping based on sex and on race, ethnic origin,**

disability or age."
and

42 USC § 2000d, as amended: "No person in the United States shall, on **the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program** or activity receiving Federal financial assistance." [(2)(A): [Program includes] "a college, university or other postsecondary institution, or a public system of higher education; or (B) a local educational agency, system of vocational education or other school system."]
Fair Housing Acts of 1968 and 1988, 42 USC § 3601, *et seq.*

> 42 USC § 3604: ". . . [I]t shall be **unlawful** . . . (a) to **refuse to sell or rent** after the making of a bonafide offer, or to **refuse to negotiate for the sale or rental** of or **otherwise make unavailable or deny, a dwelling** to any person **because of race, color, religion, sex, familial status, or national origin.**
>
> "(b) **to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in concert therewith, because of race, color, religion, sex familial status or national origin**. . . ."

CASES

Adickes v. Kress & Co., 398 U.S. 144, 1589-59 (1970) (circumstantial evidence sufficient to establish conspiracy; inferred meeting of the minds regarding accomplishment of conspiratorial objectives)

Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975) (Congressional intent: "filing charges with the EEOC should not be construed to erect a jurisdictional prerequisite to suit"; Title VII has "broad goal of elimination of discrimination," intent "to provide ***all necessary relief*** and to ***ensure complete justice***")

Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir. 1996) (duty to view the complaint in the light most favorable to plaintiff, and to draw all reasonable inferences from the facts in favor of plaintiff)

Boben v. City of East Chicago, IN, 799 F.2d 1180, 1185-86 (7th Cir. 1986) ("discrimination and harassment of an individual woman because of her sex is a violation of the equal protection clause" (1187)

Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989) (42 USC §§ 1983 and 1985(3) Illinois cases are governed by a two-year statute of limitations on personal injury claims)

Box v. A&P Tea Co., 772 F.2d 1372 (7th Cir. 1985) ("handwritten addendum to typed charge of race discrimination, also suggesting sex discrimination, sufficient to permit judicial claim")

Brainerd v. Potratz, 421 F.Supp. 836, 840 (N.D.Ill. 1976) (citing *Turner v. Baxley*, 354 F.Supp. 963, 974 (D.Vt. 1972) (requires statement of class-based animus; leave to amend complaint granted)

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 274 (1993) ("Invidious" means tending to excite odium, ill will or envy"; "likely to give offense, especially unjustly and irrationally, discriminating")

Bugg v. Allied Industrial Workers Local 507, 674 F.2d 595 (7th Cir.) (doctrine of continuing wrongs applies waiver and estoppel of statute of limitations bar regarding actions related to Title VII discrimination cases; inapplicable when there is immediate and direct injury with consequential effects (American Law of Torts, § not on point because of long-term continuing nature of the defamatory and slanderous events and deeds, fo which the cause(s) (often concealed) and damaging consequences were not immediately apparent [no trouble finding a job before; time needed to prove (or believe) black-listing] or victim relies on misleading legal advice constituting malpractice [Azulay's saying nothing could be done about it].

Byrd v. Clark, 783 F.2d 1002 (6th Cir. 1986) (distinguished from instant case because of multiple conspirators; see also, *Gilmere, Volk, e.g.*, where no dispute of fact, burden of the defendant to prove truth or

falsehood; where plaintiff's evidence contains question as to material facts, to dismiss the case would be to err; non-supervisory officers or employees of a single entity employer are responsible to stop the wrongful acts of supervisory officers ("otherwise, . . . [they would be insulated] from liability for reasonably foreseeable consequences or neglect of their duty to enforce the laws and preserve the peace") (1007); although no proper §1985 claim under single entity – no conspiracy theory, and no racial issue, a causal link existed between official (county) policy and the injury plaintiff sustained under §1983 (1007-08).)

Cada v. Baxter Healthcare Corp. 920 F.2d 446, 450-51 (7th Cir. 1990) (equitable tolling avoids the bar of statute of limitations if despite due diligence, vital information bearing on existence of claim is unable to be obtained).

Caplan v. Internat'l Fidelity Ins. Co., 885 F.Supp. 175 (N.D.Ill. 1995) (leave to file amended complaint granted to show sufficiency of emotional distress and fraud (179)).

Carpenters v. Scott, 463 U.S. 825, 847 n.10 (class-based animus aimed at deprivation of constitutional right secured not only against official infringement but against private action as well; "fundamental rights supercede narrow specific views" and "the Novotny Court's statements should not be given independent significance" [relied upon in subsequent cases] without real analysis of the issues).

Carr v. Allison Gas, 32 F.3d 1007, 1009 (7th Cir. 1994) (plaintiff need show only that conditions of employment were adversely affected in order to state a claim under Title VII).

Central Bank v. First Interstate Bank, -- U.S. --, --, 114 S.Ct. 1439, 1455 (1994) (anachronistic error not to accord private right of action when common law presumption implies such right to the class for whom such statute(s) was/were enacted; retention of private right of action to sue those primarily liable for fraud while dissenting opinions (four in number) urge right of action against aiders and abettors because aider and abettor liability was/is an important part of SEC enforcement. By analogy, the ruling extends to EEOC enforcement against discrimination by employers – in the instant case, by employers in collaboration with

plaintiff-appellant's landlords, religious advisers, newspapers and local merchants aiding and abetting the discrimination).

Chambers v. American Trans Air, Inc., 17 F.3d 998, 1003 (7th Cir. 1994) (proper to subvert the statute of limitations if a pattern of discrimination extends into the limitations period)

Chapman v. Musich, 726 F.2d 405, 408 (8th Cir. 1984) ("a complaint is not to be dismissed 'merely because a Plaintiff's allegations do not support the particular legal theory he advances,' for a court is under a duty to examine the complaint to determine if the allegations provide for relief ***on any possible theory***").

Chappell v. Emco Machine Works Co., 601 F.2d 1295 (1979 CAS Tex) (cases with similar combinations of statutes, facts, potentially applicable civil rights violations and resultant injuries continue to be decided on a case-by-case basis in the most equitable and just manner in the premises).

Chapski v. Copley Press, 442 N.E.2d 195, 65 Ill.Dec. at 889) (under Illinois law, a "statement that logically refers to a particular person may be the subject of a defamation action, even though the statement does not refer to such person by name")

Cheek v. Western and Southern Life Ins. Co., 31 F.3d 497, 504-505 (7th Cir. 1994) (married woman discriminated against by insurance industry; court too narrow in its ruling)

Christian Populist Party of Arkansas v. Secretary of State of State of Arkansas, 650 F.Supp. 1205, 1214 (E.D.Ark. 1986) (not on point; claims did not fail because of Sec. 241)

City of Greenwood, Mississippi v. Peacock, 384 U.S. 808 (1966) (where no citizen has a right to commit offense complained of, remand to federal court is not proper).

Cok v. Cosentino, 876 F.2d 1 (1st Cir. 1989) (Section 241) (although state actor defendants had absolute immunity under a court order, pro se plaintiff should have been advised how to redress grievances

appropriately; judicial authority might be exceeded, rendering deeds actionable under 42 USC § 1983 or state tort law. Judicial immunity only extends to acts which do not exceed judicial jurisdiction.)

Colaizzi v. Walker, 542 F.2d at 972-74 ("plaintiff need only allege the denial of a property or liberty interest that is arguable or putatively plausible under state law or the Bill of Rights, in order to allege . . . a federal claim for stigmatization of reputation, good name or integrity").

Conley v. Gibson, 355 U.S. 41, 47 (1957) ("pleading is not a skill in which one misstep dooms the suit"; rather, "the purpose of pleading is to facilitate proper decision on the merits," in accord with the "substantial justice" contemplated by Fed.R.Civ.P. 8(f)").

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962) (when different inferences can be drawn from the facts alleged, rather than judicial interpretation, a jury is to weigh the contradictory evidence and inferences (621)).

Corcoran v. Chicago Park Dist., 875 F.2d 609 (7th Cir., 1989) (latitude appropriately extended to *pro se* plaintiffs)

Creech v. Federal Land Bank of Wichita, 647 F.supp. 1097, 1099 (D.Colo. 1986) (encouraged pursuit of claims in state court, dismissed RICO claims without prejudice, and upheld the latitude [extended] to *pro se* plaintiffs).

Cross v. State of Ala., 49 F.3d 1490, 1507-09 (11th Cir. 1995) ("circumstantial evidence may establish a § 2520 claim"; and a jury may determine a violation of plaintiff's rights under the statute; waiver is available when notice has been given to the employer in other way than through the EEOC – employer had knowledge of the harassment by complaint to higher management of the problem or by pervasive nature of the harassment so that the inference of constructive knowledge arises").

Culp v. U.S., 131 F.2d 93 (CCA Ark. 1942) (statute of limitations does not run until the last overt act leading to accomplishment of the conspiracy has been committed)

Daniels v. Essex Group, Inc., 937 F.2d 1264, 1274-75 (7th Cir. 1991) ("later acts of [racial, religious or sexual] harassment must be considered in the context of ten years of verbal taunting"; pervasive pattern of racial [sexual] jokes sufficient to sustain a hostile environment claim)

DeShaney v. Winnebago DSS, 489 U.S. 189 (1989) (failure to provide police protection is abuse of power).

Dey v. Colt Const. & Devpt. Co., 28 F.3d 1446, 1454-55, 1458-60 (7th Cir. 1994), citing 58 Fed.Reg. 51266, 51269, Prop. 29 CFR . § 1609.1(d)) *Holding:*

1. Discriminatory alteration of working conditions is test of discrimination, not whether or not work is imparied (114 S.Ct., at 372); daily comments (sex banter) which prevented plaintiff from completing work in a timely fashion was discriminatory alteration*);*

2. Criterion of hostile environment is "not what a reasonable female employee is capable of enduring, but whether the offensive acts alter the conditions of employment";

3. Absence of noticeable decline in job productivity not emphasized where ample evidence shows that the campaign of harassment had an impact on its target and made it more difficult for her to perform her job;

4. Statements considered objectively isolated, innocuous and not actionable become actionable when part of a series [a regular or daily occurrence is sufficiently severe and pervasive to create a hostile environment];

5. "Pervasive pattern of racial [sexual] jokes sufficient to sustain a hostile environment claim;

6. In retaliatory discharge, circumstantial evidence sufficient to establish inference of employer awareness of harassment complaint;

7. Summary judgment improper where employee with discriminatory animus provided information that may have effected the adverse employment;

8..Summary judgment improper where supervisor who made age-related remarks (Judd and Nickerson) participated in ranking the performance of employees and in the eventual decision to terminate the plaintiff's employment);

9. Reasonable jurors could conclude that supervisor intent upon

purging the workforce of older employees [women] lied to his supervisors about the quality of plaintiff's job skills.

10. Employers cannot escape responsibility for sex discrimination 'when facts on which the reviewers rely have been filtered by a manger determined to purge the labor force women';

11. Evidence is sufficient to support sex discrimination case where supervisor's discriminatory animus was reflected in the information he provided to the ultimate decisionmakers;

12. Plaintiff may create an issue of fact regarding employer credibility by refuting an employer's claim of performance deficiencies, showing animus of employer exaggeration and pretext for discrimination.

Doe v. R.R. Donnelly & Sons Co., 42 F.3d 439 (7th Cir. 1994)(relief from a time-barred act obtainable by linking it with an act within the limitations period)

Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130 U.A., 657 F.2d 890, 907 (7th Cir. 1981) (conciliation is not an inalienable right of Title VII defendants; the courts must give way to Plaintiff's right to sue appropriate parties).

Fannie v. Chamberlain, 445 F.Supp. 65 (W.D. Pa. 1977) (§ 1985(3) provides remedy for . . . and reaches discrimination on the basis of sex, with females members of a class protected by (§ 1985(3))

Franks v. Bowman Transportation Co., 427 U.S. 747 (1976) (Congressional intent: "filing charges with the EEOC should not be construed to erect a jurisdictional prerequisite to suit"; "emphatic confirmation that the federal courts are empowered to fashion such relief as the particular circumstances of a case may require to effect restitution, making whole in so far as possible the victims of . . . discrimination").

Galloway v. Gen'l Motors Service Parts Oper., 78 F.3d 1164, 1167 (7th Cir. 1996) (although "merely vulgar, sporadic and annoying comments or conduct are not actionable, when the same conduct or comments are repeated constantly, they become seriously harassing through dint of repetition and are therefore actionable").

Georgia v. Rachel, 384 U.S. 780 (1966) ("formal expression of state law violates right to ber protected by Constitution, removal to federal court is proper")

Gilmore v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985) (parallel tort remedy does not preclude a plaitniff from asserting substantive due process violations in the federal courts under 42 USC § 1983 (1006)).

Gooden v. Neal, 17 F.3d 925, 929 (7th Cir. 1994), citing 20 ILCSA, 415/19c.1) (state law claim of wrongful retaliation and federal claim of first amendment violation raise distinct legal theories)

Great Am. Fed. Sav. & Loan Ass'n. v. Novotny, 442 U.S. 366 (1979) (more than one act of an employer by agreement of two or more officers of the company constitutes intracorporate conspiracy (bypassing no-conspiracy theory); Title VII can be the basis of a § 1985(3) claim (366). [Although] Title VII administrative provisions [are] bypassed by § 1985(3) claims, Title VII can be the source of a right asserted in a § 1985(3) action" (366).

Griffin v. Breckenridge, 403 U.S. 88, at 104 (extends Section 241 to private conspiracies, and private rights of action)

Gusman v. Unisys, 986 F.2d 1146, 1147 (7th Cir. 1993) (reasonable jurors could conclude that supervisor intent upon purging the workforce of older employees lied to his supervisors about the quality of plaintiffs' job skills).

Hack v. Oxford Health Care, Inc., 562 F.Supp. 295, 296 (N.D. Ind. 1983) ("on motion to dismiss, all allegations of plaintiff's complaint must be construed in the light most favorable to plaitniff (allegations taken as true)" (296, quoting Scheuer v. Rhodes, 416 U.S. 232).

Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972) (per curiam) ("read the *pro se* party's supporting papers liberally and interpret them to raise the strongest arguments that they suggest")

Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979) (the nature of conspiracy is that it is "unlikely that [non-circumstantial] evidence

will exist"" all that is necessary is that there is a ""possibility that a jury can infer from the circumstances that alleged conspirators have/had a meeting of the minds and reached an understanding to achieve conspiratorial objectives"; no liability under conspiracy claims is necessary for liability under § 1986 – join as defendants those who fail to stop conspiracy even if not active co-conspirators.

Harris v. Forklift, 114 S.Ct., 367 (1993), 126 L.Ed.2d 295 93 CDOS 8330, 93 Daily Journal DAR 14212, 63 BNA FEP CAS 225, 62 CCH EPD Para. 42623 (discriminatory intimidation, ridicule or insult sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment violates Title VII; harassment violates Title VII when "hostile conduct, the purpose or effect of which is unreasonable interference with an individual's work performance," alters the terms, conditions or privileges of the victim's employment; Title VII extends to conduct that "detracts from job performance, discourages remaining on the job, and keeps from advancing in career").

Harris v. Johnson, 731 F.Supp. 846 (N.D.Ill. 1989) ("stigma plus" test for deprivation of liberty interest protected by the 14th Amendment – met by both defamation "plus" foreclosure from employment)

Harrison v. Springdale Water & Sewer Co., 780 F.2d 1422 (8th Cir. 1986) (court to infer whatever grounds the facts imply to counseled litigants and to attorneys whose knowledge of the laws and available causes of action is obviously greater than that of a non-attorney pro se plaintiff; court under duty to examine facts for grounds for ***relief on any possible theory*** no matter what particular legal theory is asserted by the plaintiff (1426, quoting Chapman v. Musich, 726 F.2d 405, 408 (8th Cir. 1984) *Emphasis added.*

Heidelberg v. Hammer, 577 F.2d 429 (7th Cir. 1978) (*pro se* litigant must be given leave to amend when advised of specific defects in pleading)

Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (dismissal improper unless clear that no relief could be granted under any set of facts)

Huddleston v. Roger Dean Chevrolet, Inc., 845 F.2d 900, 904 (11th Cir. 1988) (waiver is available when notice has been given to the employer in

other ways than through the EEOC – employer had knowledge of the harassment by complaint to higher management of the problem or by pervasive nature of the harassment so that the inference of constructive knowledge arises).

Irwin v. Dept. of Veterans' Affairs, 498 U.S. 89 (1990) (equitable tolling proper where claimant has pursued judicial remedies by filing defective pleadings during the statutory period and where plaintiff induced or tricked by adversary misconduct into allowing filing deadline to pass)

Jenkins v. Blue Cross Mut. Hosp. Ins. Inc., 538 F.2d 164 (7th Cir. 1976) ("claims are cognizable that are 'like or reasonably related to' the allegations of the charge and growing out of such allegations").

Jeridien v. Winston Network, Inc., 888 F.2d 1151 (7th Cir. 1989) (where decisionmaker accepted input from supervisor with discriminatory motive, age discrimination a question for jury determination).

John's Insulation, Inc. v. Siska Const. Co., 774 F.Supp. 156 (S.D.N.Y. 1991) (Section 245 case dismissed only because lack of companion tort claim with discriminatory conspiracy claim – New York law question. Tort claims of libel and slander were remanded and recovery allowed thereupon. – "factual allegations of non-moving party's pleadings [must be taken] as true and construed in the light most favorable to that party"). Although no filing with the EEOC, principles against discrimination in employment remain within the broad scope and purpose of the federal civil rights laws, especially when pleaded in conjunction with interference with basic fundamental rights and liberties guaranteed by the Constitutional amendments; under such circumstances, filing with the EEOC is not prerequisite to suit.

Johnson v. Railway Express Agency, 421 U.S. 434, 95 S.Ct. 1716, 44 L.Ed. 2s 295 (1975) (in borrowing the state statute of limitations period[s], the federal courts do not need to borrow the state tolling statutes as well because of available federal rules (840-841)).

Jones v. Commander, Kan. Army Communications Plant, Department of the Army, (1993, D.C. Kan.), 147 FRD 248 (when "determining whether or not a hostile environment of sexual harassment has taken place, focus

on the perspective of the victim").

Jones v. City of Chicago, 356 F.2d 985 (7th Cir. 1988) (supervisors responsible for actions of subordinates when aware of their misconduct and fail to take action to correct the misconduct).

Jordan v. City of Chicago, Department of Police, 505 F.Supp. 1 (N.D.Ill. 1980) (City accountable under *respondeat superior* for acts of City police; express or implied authorization or approval of police misconduct by the City (policy express or implied) ***or its supervisors*** constitutes a civil rights cause of action) (Emphasis added).

Kadlec v. Illinois Bell Telephone Co., 407 F.2d 624, 627 (7th Cir. 1969) (not on point because filing phone co. regulations with the state for state approval was insufficient to bring the action under the jurisdiction of 42 USC § 1983).

Kaliman v. IDOC, 879 F.2d 276, 277 (7th Cir. 1989). (42 USC §§ 1983 and 1985(3) Illinois cases are governed by a two-year statute of limitations on personal injury claims).

Kientzy v. McDonnell Douglas Corp., 990 F.2d 1051, 1057-60 (8th Cir. 1993) (evidence is sufficient to support sex discrimination case where supervisor's discriminatory animus was reflected in the information he provided to the ultimate decisionmakers).

King v. Hillen, 21 F.3d 1572, 1581 (Fed.Cir. 1994) ("realistic picture of work environment is not obtained by viewing each incident in isolation"; criterion of hostile environment is "not what a reasonable female employee is capable of enduring, but whether the offensive acts alter the conditions of employment" (1583)).

Koelsch v. Beltone Electronics Corp., 46 F.3d 705, 707 (7th Cir. 1995) (under the continuing violations theory, relief from the time-barred act obtainable by linking it with an act within the limitations period; when a later act duplicates or repeats previous act(s), the combination is treated as "one continuous act that ends within the limitations period.")

Komel v. Jewel Cos., 874 F.2d 472, 474-75 (7th Cir. 1989) (Plaintiff may create an issue of fact by specifically refuting facts that allegedly support an employer's claim of performance deficiencies).

Koski v. Gainer, 63 FEP Cas BNA 939 (N.D.Ill. 1993), No. 92 C3293. (reverse discrimination under § 1981 is specifically actionable where "injury in fact is denial of equal treatment resulting from imposition of a barrier" based on race or color, including white.)

Kunik v. Racine County, Wis., 946 F.2d 1574, 1580-1582 (7th Cir. 1991) (remanded for trial because not clear that "no relief could be granted under any set of facts that could be proved consistent with the allegations").

Larry v. Lawler, 605 F.2d 958, 959 (7th Cir. 1978) (length of wrongful deprivation is an important factor in assessing th4 impact of "official" action on private interests, including extent of injury and damages therefrom).

Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979) (discovery proper to establish facts and inferred linkage in conspiracy cases rather than dismissal).

Magnussen v. Peak Technical Services, 808 F.Supp. 500 (E.D.Va. 1992) (Title VII employer and §1985(3) individual liability determined by reference to "extent of the employer's right to control the means and manner of the worker's performance," citing 42 USC §§ 2000e(b) and 2000e-2(a)(1), by degree of control over terms and conditions of employment; unconventional employer (deal of outsider to hire or fire) control of conditions of employment; prima facie case of sex discrimination where evidence reflects sexist attitudes; and employer is liable for sexual harassment by non-employee ("agent") where the employer does not correct the situation within its control and when the employer knows or "has reason to know" of the non-employee's conduct (EEOC Dec. 84-3, 34 Fair Empl. Prac.Cas. (BNA) 1887 (1984), 29 CFR §1604.11(e) (501,512)).

Manny v. Department of Transportation, 664 F.Supp. 1210 (N.D.Ill. 1987) (where defect[s] in complaint are curable, district court retains

jurisdiction over the action, dismissal of complaint not resulting in dismissal of the action (28 USC § 1332(a,c)).

McCottrell v. EEOC, 726 F.2d 350, 351 (7th Cir. 1984) ("inappropriate to hold *pro se* litigants to same standard set for counseled litigants")

Meadows v. Ford Motor Co., 510 F.2d 939 (6th Cir. 1974) (courts to focus on sex discrimination with equal force as race discrimination)

Medina v. Spotnail, Inc., 591 F.Supp. 190, (N.D.Ill. 1984) (administrative remedies of Title VII do not estend to retaliatory discharge, Illinois' public policy against involuntary employment (48 Ill.Rev.Stat. § 300), loss of immunity [as conspirators] by personally interested corporate officers who act outside the scope of their corporate authority, and allowance of pendant jurisdiction of state claims for thesake of judicial economy (196-198). *Medina* found in plaintiff's favor on defamation claims).

Meritor v. Vinson, 477 U.S. 57 (1986) (a regular or daily occurrence is sufficiently severe and pervasive to create a hostile environment).

Merrill, Lynch v. Curran, 456 U.S. 353, 394 (1982) ("common law presumption . . . that a statute enacted for the benefit of a particular class confer[s] on members of that class the right to sue violators of that statute").

Milburn v. Blackfrica Promotions, Inc., 392 F.Supp. 434 (S.D.N.Y., 1974) (intracorporate no conspiracy theory overturned by *Volk, et al., infra* (1988).)

Munson v Friske, 754 F.2d 683, 695 (7th Cir. 1985) (§1985(3) liability for damages extends to discrimination on the basis of sex, religion, ethnicity or political loyalty).

Owens v. Okura, 488 U.S. 235, 250, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989) ("where state law provides multiple statutes of limitations for personal injury actions, the courts considering §1983 claims should borrow the general or residual rule/statute for personal injury actions").

Palmer v. General Mills, Inc., 513 F.2d 1040 (intention of 42 USC §2000e-2 I on the consequences, the damages to the worker, of employment practices (defamation and impaired working conditions), to ***eradicate discrimination*** and continuing ***effects of past discrimination*** which inhere in present practices and continue past injustices).

Paul v. Davis, 424 U.S. 693 ("stigma plus test")

Pendrell v. Chatham College, 386 F.Supp. 541 (W.D.Pa. 1974) (§1985(3) reaches discrimination on the basis of sex, with females members of a class protected by §1985(3)).

Raskin v. U. of Pa., 386 F.Supp. 992, 1005-06 (E.D.Pa., 1974) (where "two or more corporate officers by agreement commit different discriminatory acts against a plaintiff, . . . a §1985(3) violation has taken place" (*see also*, *Volk v. Coler*, 845 F.2d 1422, 1434 (7th Cir. 1988).)

Reese v. City Police Dept., 602 F.Supp. 441, 443 (N.D.Ill. 1984) (police department no "separate legal existence from the city" (441); suprression of evidence violates due process, a constitutionally protected right to defense materials (443); suit for damages against the City under 42 USC §1983 was proper).

Robinson v. PPG Indus. Inc., 23 F.3d 1159, 1165-66 (7th Cir. 1994) (summary judgment improper where supervisor who made age-related remarks participated in ranking the performance of employees and in the eventual decision to terminate the plaintiff's employment.

Rodgers v. Western-Southern Life Ins. Co., 12 F.3d 668, 674 (7th Cir. 1993) ("court must consider the cumulative weight of several "isolated . . . comments").

Scherer v. Balkema, 840 F.2d 437, 400 (7th Cir., 1988) (claim accrues when injured becomes aware he is suffering from wrong for which damages may be recovered in a civil action).

Scheuer v. Rhodes, 416 U.S. 232 ("factual allegations of non-moving party's pleadings [must be taken] as true and construed in the light most favorable to that party").

Schnellenbaecher v. Baskin Clothing Co., 887 F.2d 124 (7th Cir. 1989) (caims under Title VII upheld because of EEOC's prior error either in not investigating the claim or not giving sufficient notice to the defendant(s); upheld principle that proper claim should not be masked or refused by the EEOC nor the plaintiff penalized for an EEOC error or failure to issue a "right to sue" letter; exception to the rule of filing with the EEOC exists where "unnamed parties have been provided with adequate notice of the charge [through any other circumstances] . . . where the party has been given the opportunity to participate in conciliation proceedings aimed at voluntary compliance" (126).)

Selan v. Kiley, 969 F.2d 560 (7th Cir. 1992) (when a later act duplicates or repeats previous act(s), the combination is treated as "one continuous act that ends within the limitations period).

Shager v. Upjohn Co., 913 F.2d 398, 405 (7th Cir. 1990) (dismissal improper where plaintiff's supervisor 's discriminatory animus tainted his assessment of plaintiff's performance on which decisionmaker relied).

Singleton v. City of New York, 632 F.2d 185, 192 (2d Cir. 1988) (claim accrues when injured becomes aware he is suffering from wrong for which damages may be recovered in a civil action).

Smith v. City of Chicago Heights, 951 F.2d 834, 839 (7th Cir. 1992) (five-year statute of limitations applies in instances of fraudulent concealment; statute of limitations begins when concealed cause of action discovered, whether or not the identity of the wrongdoer is known.)

Sparkman v. McFarland, 601 F.2d 261 (7th Cir. 1979) (not on point as to immunity of police actions: police officers' actions not necessarily immune; particularity in pleading exceeds Fed.R.Civ.P.8(a)(2) especially without motion for more definite statement; ;since conspiracy involves clandestine plans and deeds, inference of meeting of minds based on facts pled is sufficient.)

Stacks v. SW Bell Yellow Pages, Inc., 27 F.3d 1316 (8th Cir. 1994) (employers cannot escape responsibility for sex discrimination "when

facts on which the reviewers rely have been filtered by a manager determined to purge the labor force of women")

Staelens v. Yake, 432 F.Supp. 834, 838 (N.D.Ill. 1977) (religious rights do not give "liberty to expose . . . [anyone] . . . to ill health or death" *(Prince v. Mass.*, 3221 U.S. 158, 166).

Stevens v. Tillman, 855 F.2d 394, 404 (7th Cir. 1988) (*Novotny* is not the "last word" or "final conclusion" regarding §1985(3) – understanding thereof includes "constantly changing interpretation"; cases with similar combinations of statutes, facts, potentially applicable civil rights violations and resultant injuries decided on a case-by-case basis in the most equitable and just manner in the premises; under Illinois law, a "statement that logically refers to a particular person may be the subject of a defamation action, even though the statement does not refer to such person by name" (*Chapski v. Copley Press*, 442 N.E.2d 195, 65 Ill.Dec. at 889); and there is no direct reference requirement under USC Constitutional Amendment 1 (*Saenz v. Playboy Enterprises Inc.*, 841 F.2d 1309, 1313-17 (7th Cir. 1988).

Strzelicki v. Schwarz Paper Co., 824 F.Supp. 821 (N.D.Ill. 1993) (Title VII has broad remedial purpose: "if people who make discriminatory decisions don't have to pay for them, they may never alter their behavior and the wrongdoers may elude punishment entirely, while the victim may receive no compensation whatsoever"; "broad goal of elimination of discrimination," its intent to provide all necessary relief and to ensure complete justice.)

Tarkowski v. Robert Bartlett Realty Co., 644 F.2d 1204 (7th Cir. 1980) (facts necessary to infer meeting of minds insufficient; in conspiracy, discovery proper to establish facts and suspected or inferred "linkage" rather than dismissal (1208); pro se litigants allowed to replead when made aware of specific deficiencies in pleading (1207).)

U.S. v. Guest, 383 U.S. 745 (1966) (equal protection clause rights created by call of state police and use of judicial action by private party to carry out racial discrimination (756); allegations of cooperative action without proof are enough to prevent dismissal (757); Justice Clark's opinion stated that "the specific language of Section 5 of the 14th Amendment

empowers Congress to enact laws punishing all conspiracies with or without state action which interfere with 14th Amendment rights" (762); and Justice Brennan's dissenting opinion included the observation that §241 "prohibits all conspiracies which interfere with a right secured by the Constitution").

Vakharia v. Swedish Covenant Hospital, 824 F.Supp. 7669 (N.D.Ill. 1993) ("if people who make discriminatory decisions don't have to pay for them, they may never alter their behavior and the wrongdoers may elude punishment entirely, while the victim may receive no compensation whatsoever. That outcome is incompatible with the broad remedial purposes of Title VII" (786), its "broad goal of elimination fo discrimination," its intent to provide all necessary relief and to ensure complete justice"(786). *Holding:*

1. Unnamed defendants whose acts were described in the complaint could be included as named defendants (769);
2. Defendants may be liable under Title VII even if not the employer(s) (42 USC §1983) (771);
3. If discrimination impedes a person's access to employment opportunities with third parties, defendant is liable under Title VII, §1981 or ADEA (29 USC §621 *et seq.*) (771);
4. Conciliation is not an inalienable right of Title VII defendants; the courts must give way to plaintiff's right to sue appropriate parties (774);
5. Decision-making employees are liable in an individual capacity under ADEA, Title VII and 42 USC §1981 for discriminatory acts (785);
6. Title VII has two purposes: a) to compensate the victims of discrimination; and b) to deter discrimination in the future (785).

Volk v. Coler, 845 F.2d 1422, 14343 (7th Cir. 1988) ("discrimination and harassment of an individual woman because of her sex is a violation of the equal protection clause" (1433); §1985(3) liability for damages extends to discrimination on the basis of sex, religion, ethnicity or political loyalty and does not require class-wide discrimination; not necessary to prove class-based animus for §§ 1983 and 1985(3) claims (1434) and §1985(3) does extend to intra-entity conspiracies.

Walker v. Carter, 820 F.Supp. 1095, 1097 (C.D.Ill. 1993) ("when determining genuine issue(s) of material fact, the evidence [must be construed] in the light most favorable to the non-moving party").

Walker v. Georgia, 417 F.2d 1 (1969) (removal to District Court proper if state prosecution is for the purpose of punishing the exercise of rights secured by the Civil Rights Act).

Weiland v. Byrne, 392 F.Supp. 21 (N.D.Ill. 1975) (not on point: single incident rather than repeated stalking and pattern of discrimination rising to constitutional deprivation of rights).

Wheeler v. Southland Corp., 875 F.2d 1246 (CA6 Ohio, 1989) (no need to mention harassment conditions in resignation letter); *Hunter v. Countryside Assoc. for Handicapped, Inc.*, 710 F.Supp. 233 (N.D.Ill. 1989); *Levendos v. Stern Entertainment, Inc.* 860 F.2d 1227 (CA3 Pa 1988)).

Williams v. Banning, 72 F.3d 552 (7th Cir. 1995) (individual employer liable under Title VII if serves in supervisory position and exercises sufficient control over hiring, firing or conditions of employment of plaintiff, citing *Paroline v. Unisys Corp.*, 879 F.2d 100, 104.)

Wilson v. Giesen, 956 F.2ed 736 (7th Cir. 1992) (claim accrues when the victim knows or has reason to know of injury giving rise to cause of action; when injured becomes aware he is suffering from wrong for which damages may be recovered in a civil action).

Wright v. Dept. of Children and Family Services, 40 F.3d 1492 (7th Cir. 1994) (intra-corporate conspiracy doctrine bars construction of conspiracy between officers and/or employees of the same entity unless the doctrine must be set aside and overruled when egregious and pervasive circumstances so indicate).

Yick Wo v. Hopkins, 118 U.S. 356 (1886) (government may not "selectively deny its protective services to certain disfavored minorities

without violating the equal protection clause"; failure to protect is an abuse of power).

Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 398 (1990) (compliance with the filing period is not a jurisdictional prerequisite to filing a Title VII suit, but a requirement subject to waiver as well as tolling when equity so requires; waiver or tolling is consistent with the remedial purpose of the legislature without negating the purpose of the filing requirement, to give prompt notice to the employer, who has access to notice in other ways).